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Supreme Court of the United States

OCTOBER TERM, 1928

No. 82

FRANCIS BEIDLER, II, AND GEORGE ENGELKING, AS EXECUTORS OF THE LAST WILL AND TESTAMENT OF FRANCIS BEIDLER, PLAINTIFFS IN ERROR,

versus

SOUTH CAROLINA TAX COMMISSION, DEFENDANT IN ERROR

BRIEF FOR DEFENDANT IN ERROR

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J. FRASER LYON,
COUNSEL FOR DEFENDANTS IN ERROR.

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STATEMENT

Francis Beidler at the time of his death and for some years prior thereto, was a resident of the State of Illinois.

Santee River Cypress Lumber Company is a corporation organized under the laws of South Carolina and, at the times mentioned in this controversy, doing business exclusively within the State of South Carolina. Its properties are entirely within the State of South Carolina and consist mainly of real estate. At the time of the death of Francis Beidler this corporation owed him on account of moneys loaned $556,864.22 and on account of dividends theretofore declared but not paid amounting to $64,672.00. The money was loaned by Francis Beidler at various times beginning with the year 1907 and ending with the year 1922, and during this same period various credits were made thereon, leaving the above-mentioned balance due at the time of death. The various debts and credits are evidenced only by entries on the books of Santee River Cypress Lumber Company at its home office in South Carolina. R(2). Mr. Beidler also kept a set of personal books in Chicago, upon which appeared entries of the amounts due him. R(2) R(139–150). A majority of the stock of the corporation was owned by Francis Beidler at the time of his death. The balance was owned by his wife and two children, beneficiaries under his will. R(1–2). The deceased having owned a majority of the stock of the corporation, his executors are now in complete control of the corporatin.

South Carolina Tax Commission levied an inheritance or transfer tax upon all of the above-mentioned assets, property having its taxable situs within the State. At the time of the death of Mr. Beidler, Brooklyn Cooperage Company, a New York corporation, was indebted to Santee River Cypress Lumber Company, payable at stated intervals, an amount in excess of the debts due by the Santee River Cypress Lumber Company to Mr. Beidler. The Brooklyn Cooperage Company

also owned properties in several states other than South Carolina in excess of the debt due by Santee River Cypress Lumber Company to Mr. Beidler, the deceased.

ARGUMENT

South Carolina has powr to tax by way of inheritance or succession the debt owed by the domestic corporation to Mr. Beidler, a resident of Illinois.

> "Power over the person of a debtor confers jurisdiction, we repeat, and this being so, we perceive no better reason for denying the right of New York to impose a succession tax on debts owed by its citizens than upon tangible chattels found within the State at the time of the death."
>
> *Blackstone v. Miller,* 188 U. S., 189.

The rule as laid down in the case of *Blackstone v. Miller* has been followed and reaffirmed by this Court in many subsequent cases:

> "And in the case of credits, though intangible, arising as did those in the present instance, the control adequate to confer jurisdiction may be found in the sovereignty of the debtor's domicile. The debt, of course, is not property in the hands of the debtor, but it is an obligation of the debtor and is of value to the creditor because he may be compelled to pay and power over the debtor at his domicile is control of the ordinary means of enforcement."
>
> *Liverpool Insurance Company v. Board of Assessors,* 31 Sup. C. R., 553; 221 U. S., 346.

Also in the cases of:

McGuire v. Trefry, 253 U. S., 12.
Maxwell v. Bugbee, 250 U. S., 525.

Bullen v. Wisconsin, 240 U. S., 625.
Metropolitan Insurance Company v. New Orleans, 205 U. S., 395.
Baker v. Baker-Eccles Company, 242 U. S., 394.

Remedies for the Collection of the Debt in Other States Does not affect the Right of South Carolina to Tax

Plaintiff in error asserts that because certain extraordinary remedies may be resorted to in other jurisdictions than South Carolina to enforce payment of the debts in question, that, therefore, South Carolina may not levy tax thereon. It will be noted that the executors in this case by reason of their holding a majority of the stock in Santee River Cypress Lumber Company control that corporation, besides three of the beneficiaries own almost half of the stock independently of the will. The corporation so controlled needs only to wait proper time for payment by the Brooklyn Cooperage Company on its contract, and if resort should be had to extraordinary remedies in other States to collect the debt it would only be to add expense to administration and solely for the purpose of evading payment of the inheritance tax in this State. The ordinary means of enforcing payment of this debt would be suit by executors against the corporation, but the executors have control of the corporation and such suit would be tantamount to suing themselves.

If the true test be that resort is necessary to be had to the Courts of the foreign State (domicile of the debtor) to enforce the collection of the debt or a transfer of the intangible, then, we submit, that even stocks of perhaps many domestic corporations of South Carolina could be lawfully transferred in the State of New York without resort to the Courts in South Carolina. It is perhaps well known that many corporations throughout the United States have transfer offices and keep their books in New York and Boston and perhaps other large cities and that a legal transfer of stocks could be en-

forced in those States without resort to the Courts of South Carolina or the other States where such corporation may be chartered outside of Massachusetts or New York.

If, therefore, the Santee River Cypress Lumber Company had transfer offices and kept its stock books in New York or Chicago the transfer of stocks could be compelled in the Courts of those States and resort to the Courts of South Carolina in such case would be unnecessary. We do not think that in such case South Carolina or any other State should be prevented from laying an inheritance tax on such intangibles by reason of such fortuitous facts.

To illustrate further: B is indebted to A, both residents of South Carolina. Upon the death of A, administration is had in North Carolina. The administrator in North Carolina finds that C owes to B certain debts or that B has certain properties in North Carolina that may be subjected to the payment of the debt. The administrator may either attach the debt that C owes B to satisfy the debt of B to A or he may proceed directly against the property of B found within the State of North Carolina and have the debt due to A fully satisfied. In such case resort to the Courts of South Carolina in any way would be unnecessary. If the test be that resort to the Courts of this State must be the only means of enforcing payment, then we may have a case where both debtor and creditor live in South Carolina yet no tax may be charged. There has doubtless been a failure to distinguish between the law of the State which gives life and force to the contract and the law which permits Courts of other States to enforce the contract in case jurisdiction may be had of either person or property.

It is the law of South Carolina that gives life and binding effect to the obligation to pay the debt in this case and that law must be invoked wheresoever the collection of the debt may be enforced.

The Executors Have not Title to the Debts Until They Have Complied with the Laws of South Carolina

"To this end, therefore, it is well understood that the different governments in which the movable property of a deceased may be left, upon his death, are authorized to intervene and take control. Hence, in every State, we find laws declaring in whom such property, within its limits, shall vest, and in what manner it shall be administered. True, if the decedent has left a will or testament, upon such testament being established under the *lex domicilii,* it will usually be confirmed under the jurisdiction where the property is found. And the title of the executor, as well as the disposition of the property therein appointed and directed, will be recognized there. But this confirmation must take place and be had in accordance with the laws of the *rei sitae* before even an executor under such testament can intermeddle with the property."

Dial v. Gary, 14 S. C., 573.

Reaffirmed in *Merchants National Bank v. South Carolina Tax Commission,* 121 S. E., 142.

This is a general rule recognized by many States: *Executors and Administrators,* 11 R. C. L., Sections 535 and 536. And cases cited in *Beidler et al. v. South Carolina Tax Commission* herein, R., 103–105.

Besides, Section 19 of the Act forbids the corporation to transfer the debt without notice to the Tax Commission and retention of a sufficient amount of money to pay the tax. Section 19, see appendix.

It is no doubt true that there must be some property or right to property within the jurisdiction to justify either ancillary or original administration.

The debt and the dividend owed by the Santee Company to the deceased was sufficient to give this State jurisdiction to appoint an administrator who could have lawfully taken charge of the stock upon which the tax has been paid in this case and enforce payment of the debt and the dividend in the Courts of this State.

The coming into this State of the executors appointed by the Illinois Court, exercising the rights and privileges accorded them by Section 20 of the Inheritance Tax Act, was tantamount to taking out ancillary letters in this State. Section 20, see appendix. For the purpose of collecting this tax the last above-mentioned section grants to foreign fiduciaries the privilege of coming into this State and settling their inheritance tax liabilities with the Tax Commission without proceedings of any kind in a Court of this State. Section 15 of the Act also provides:

> "If, upon the decease of a person leaving an estate, a will disposing of such estate is not offered for probate, and an executor or administrator *cum testamento annexo* appointed, or an application for administration and the appointment of an administrator made within four months after such decease, the proper Probate Court, upon application by the South Carolina Tax Commission, shall appoint an administrator. . . . . "
>
> Acts South Carolina, 1924, page 911.

Such administrator appointed upon application of the Tax Commission would unquestionably have the right to sue in the Courts of this State and enforce payment of the debt. The Legislature evidently desired to aid foreign executors and administrators to settle and pay the tax imposed with as little Court proceedings as possible and gave to them and to the South Carolina Tax Commission power to settle, pay and collect the tax with as little delay and annoyance as possible.

In a case like this we earnestly insist that it would have been unreasonable for the South Carolina Tax Commission to have applied for administration and thereby put the estate to needless expense and delay instead of settling the tax in the manner permitted by Statute. If, however, it be the law that an administrator must be appointed by a Court of this State and actually take charge of the property within this State, including debts and dividends, in order to collect this tax then hereafter the South Carolina Tax Commission will not undertake to assess and collect the tax from foreign fiduciaries as it is permitted under the Statute to do, but will, as the Statute also provides, apply to the proper Probate Court of this State for the appointment of an administrator to administer the estate and pay the tax.

We are confident that the debt and the dividend owed by the South Carolina corporation to Francis Beidler, aside from the stock holdings, was sufficient upon which to found administration in this State and that giving to the executors of Mr. Beidler, appointed in Illinois, power in this State to settle the tax without application to the Courts of this State is the equivalent of taking out ancillary letters testamentary, or the appointment of an administrator in this State and of such executor or administrator for the purpose of settling the tax, taking charge of all the assets of the deceased which were found within the State of South Carolina. In other words, the executors in this case appointed in Illinois have already come into South Carolina and exercised the privileges accorded them under the laws of the State, which privilege was accorded in lieu of their taking out ancillary letters.

If, however, it be held that actual administration in South Carolina is necessary for the collection of the tax on the debts in question then it is urged that the South Carolina Tax Commission be given sufficient time in which to have an administrator appointed and the estate administered in the usual manner.

The Blodgett-Silberman case:

Plaintiff in error cites and relies upon the case of *Blodgett v. Silberman*, decided by this Court April 16, 1928, as reversing the doctrine laid down in the case of *Blackstone v. Miller*, in which latter case it is held: "Power over the person of the debtor confers jurisdiction, we repeat. . . . " In the case of *Blackstone v. Miller* the State of New York was sustained by this Court in laying an inheritance or succession tax upon intangibles in that State owned by a non-resident, the exact facts existing in the case at present before the Court.

In *Blodgett v. Silberman* it was decided that the State of Connecticut could tax intangibles having their situs in New York belonging to a resident of Connecticut and reaffirmed the decision in the *Frick case* that it was beyond the power of the domiciliary State to tax tangible personalty located in another State. We feel so assured that it is so certain that intangible property located outside the domiciliary State may be taxed by the State of domicile under the legal fiction of *mobilia sequuntur personam* and that this intangible personalty may also be taxed in the foreign State where located, that no citation of authority is necessary. The fiction *mobilia sequuntur personam* is resorted to when the State of domicile imposes the tax on intangibles located in another State, and that fiction gives way to fact when the State of the actual situs taxes the same property.

Plaintiff in error states (Brief, page 68):

> " . . . In so far as the proceeds the loans in question were money for property in the State of South Carolina the value thereof was reflected in the assets of the Santee Company upon which the State levied its property tax year by year. . . . "

For the purpose of this argument, this much of the statement is conceded, but the statement to the effect that the value

of these loans was reflected in the stock of the Santee Company upon the transfer and that it has been taxed as a part of the value of the stock is incredible. Throughout this litigation nothing has been suggested that the Tax Commission failed to deduct any debt owed by the Santee Company for the purpose of ascertaining the value of the stock for this tax. The debts owed by the Santee Company to Mr. Beidler, like all other debts, were deducted from the assets before counsel agreed upon the valuation of the stock of $204.00 per share, and we think it will not be assumed that the Tax Commission did not take this indebtedness into consideration or that learned counsel for plaintiff in error overlooked so large an item affecting this tax until the preparation of their argument for this Court. Perhaps, however, it is only a failure to distinguish between value of assets and stock value.

Respectfully submitted,

JOHN M. DANIEL,
Attorney General,

J. FRASER LYON,
Counsel for Defendants in Error.

APPENDIX

SECTIONS 15, 19, AND 20 OF THE SOUTH CAROLINA INHERITANCE TAX ACT WHICH HAVE BEEN REFERRED TO HEREIN.

§ 15. Derelict Estate—Duty of Probate Judge.

Section 15. If upon the decease of a person leaving an estate, a will disposing of such estate is not offered for probate, and an executor or administrator *cum testamento annexo* appointed, or an application for administration and the appointment of an administrator made within four months after such decease, the proper Probate Court, upon application by the South Carolina Tax Commission, shall appoint an Administrator. And if it shall come to the knowledge of a Probate Judge that any person within his jurisdiction has died leaving an estate upon which no application has been made for letters of administration, and no administrator appointed, or no will offered for probate or letters testamentary issued, he shall, immediately after the lapse of four months from the death of such person, notify the South Carolina Tax Commission thereof together with his opinion as to whether or not any part of said estate is likely to be taxable.

§ 19. Delivery or Transfer of Securities by Corporations and Fiduciaries.

Section 19. If a foreign executor, administrator or trustee shall assign or transfer any stock or obligations in this State standing in the name of the decedent, or in trust for a decedent, liable to any such tax, the tax shall be paid to the State Treasurer on the transfer thereof. No safe deposit company, trust company, corporation, bank or other institution, person or persons having in possession or under control, securities, deposits or other assets belonging to or standing in the name of a decedent who was a resident or non-resident, or belonging to or

standing in the joint name of such decedent and one or more persons, including the shares of the capital stock, of, or other interest in, the safe deposit company, trust company, corporation, bank, or other institution making the delivery or transfer herein provided, shall deliver or transfer the same to the executors, administrators or legal representatives of said decedent, or to the survivor or survivors when held in the joint name of a decedent and one or more persons, or upon their order or request, unless notice of the time and place of such intended delivery or transfer be served upon the South Carolina Tax Commission at least ten days prior to said delivery or transfer; nor shall any safe deposit company, trust company, corporation, bank or other institution, person or persons, deliver or transfer any securities or deposits or other assets belonging to or standing in the name of a decedent, or belonging to or standing in the joint name of a decedent and one or more persons, including the shares of the capital stock, or other interest in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, without retaining a sufficient portion or amount thereof to pay any tax or interest which may thereafter be assessed on account of the delivery or trans fer of such securities, deposits or other assets, including the shares of the capital stock of, or other interest in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer under the provisions of this Act, unless the South Carolina Tax Commission consent thereto in writing. And it shall be lawful for the South Carolina Tax Commission personally or by representatives, to examine said securities, deposits, or assets at the time of such delivery or transfer. Failure to serve such notice, or failure to allow such examination, or failure to retain a sufficient portion or amount to pay such tax and interest, as herein provided, shall render said safe deposit company, trust company, corporation, bank or other institution, person, or persons liable to the payment of the amount of the tax and

interest due or thereafter to become due upon said securities, deposits or other assets, including the shares of the capital stock of, or other interest in, the safe deposit company, trust company, corporation, bank, or other institution making the delivery or transfer, and in addition thereto a penalty of one thousand dollars and the payment of such tax and interest thereon or of the penalty above prescribed, or both, may be enforced in an action brought by the South Carolina Tax Commission in any Court of competent jurisdiction: *Provided,* The South Carolina Tax Commission, upon good cause shown, may, in their discretion, remit the said penalty in whole or in part.

§ 20. In the Absence of Administration in This State Upon the Estate of a Non-Resident.

In the absence of administration in this State upon the estate of a non-resident, the South Carolina Tax Commission may, at the request of an executor or administrator duly appointed and qualified in the State of the decedent's domicile, or at the request of a devisee, legatee, distributee, or of the grantee under a conveyance made during the grantor's lifetime, and upon satisfactory evidence furnished it by such executor, administrator, devisee, legatee, distributee or grantee or otherwise, determine whether or not any estate of said decedent within the State is subject to tax under the provisions of this Act, and if so, may determine the amount of such tax and adjust the same with such executor, administrator, devisee, legatee, distributee, grantee or other legal representative, and for that purpose may appoint an appraiser to appraise said property as provided in Section 13, and the expense of such appraisal shall be a charge upon the said estate in addition to the tax. The South Carolina Tax Commission's certificate as to the amount of such tax and the State Treasurer's receipt for the amount therein certified may be filed in the Probate Court ha[illegible]isdiction, and when so filed shall be conclu-

sive evidence of the payment of the tax to the extent of the certification, as provided in Section 16. Whenever in such a case the tax is not adjusted within four months after the death of the decedent, the proper Probate Court, upon application of the South Carolina Tax Commission, shall appoint an administrator in this State as provided in Section 15.